

# **PAPUA UPDATE: THE LATEST ON *OTSUS PLUS***

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## I. OVERVIEW

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The idea of a new law on enhanced special autonomy (*otsus plus*) for Papua is still alive, but it is not clear who beyond a tiny elite in Papua province really wants it.<sup>1</sup> Teams representing the governors of Papua and Papua Barat provinces have produced a joint draft, but Papua Barat remains deeply unhappy with the final product. It is now in the hands of the central government, awaiting a “harmonisation” process through which it will be reviewed and almost certainly watered down by various ministries. Officials say the target date for getting a final draft adopted by the Indonesian parliament is 17 August 2014. They believe there is still a chance that it can squeeze through, despite national elections and a long list of other legislative priorities competing for attention.

The latest draft contains several new provisions, all of which were inserted by the Papua team and opposed by its counterpart from Papua Barat. It creates the largely powerless position of governor-general to supervise the law’s implementation in both Papua and Papua Barat. It defines indigenous Papuan in racial terms, granting indigenous status to anyone born of a Melanesian Papuan father regardless of the mother’s origin but not to someone whose mother only was Melanesian Papuan. It also requires that only indigenous Papuans be allowed to stand for all elected executive posts from governor and vice-governor down to village head. It abandons direct local elections. It mandates a single and strengthened Papuan People’s Council (Majelis Rakyat Papua, MRP) that would be based in Jayapura.

The most controversial provision, which would have given Papua the right to call a referendum on self-determination if the law is not fully implemented, was removed just before it was presented to the president on 28 January.

The current version—Draft No. 14—pays lip service to the idea of a single Papua, but the drafting process has highlighted deep divisions between the two provinces that have not been erased, even after a meeting on 15 February produced a formal consensus. From the outset, the push for *otsus plus* has been driven by Papua Governor Lukas Enembe and a small circle of advisers in Jayapura. Their main aim was to strengthen provincial authority. They never seriously invited input from their colleagues in Manokwari, the Papua Barat capital, and even after the latter produced an alternative draft with innovative proposals, they failed to incorporate many of its key provisions.

The central government has encouraged the process to date for several reasons. President Yudhoyono reportedly wants to ensure a concrete legacy in Papua before he leaves office in October 2014. His political party, Partai Demokrat, whose Papua provincial branch Enembe heads, has plummeted in the polls and is looking for a success, if possible before the April legislative elections. The Ministry of Home Affairs likes the bill—or at least some aspects of it—because with its provision on the removal of direct elections, it promotes the concept of “asymmetric decentralisation” or different governance arrangements for different parts of the country. The Ministry is hoping to drive through new laws on local government and local elections before the end of the legislative term that that will also feature this concept, and with Enembe’s team backing it for Papua, the Ministry can say it has local support.

In the meantime, for all the effort that has gone into revising drafts, it is still the case that there has been no public consultation or debate, and Papuan civil society seems to regard the whole idea of revising special autonomy with deep cynicism, if not derision. Other issues have captured far more attention:

- The inadequacy in Papua of preparations for the general elections that will be held in

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<sup>1</sup> In this report, “Papua” refers to the full area originally granted special autonomy in 2001, covering both Papua and Papua Barat provinces. To avoid confusion, “Papua province” is used when referring only to the province.

only six weeks' time, including uncertainty about whether the *noken* system, an allegedly traditional practice that gives the authority to local leaders to vote on behalf of their communities, will be allowed. The potential for violence one way or another could be high, especially in the highlands.

- The continuing pattern of attacks on security forces in Puncak Jaya district and mixed messages from local officials on the nature and success of informal efforts at dialogue with the armed guerrilla movement, the Free Papua Organisation (Organisasi Papua Merdeka, OPM).
- The unsolved rash of shootings in December and January along the road to the giant Freeport mine, and the prospects of massive layoffs at the site because of the provisions of a new mining law.
- The sentencing of ALL the members of the Papua Barat legislature to terms ranging from twelve to fifteen months for their role in a corruption case involving alleged private loans from the provincial budget. None are yet in prison, and business continues as usual in Manokwari pending the outcome of an appeal at the Jayapura court.
- The conviction of a notoriously corrupt police official from Sorong, Papua Barat on illegal logging charges. He was sentenced to only two years' imprisonment when the prosecution had asked for fifteen, and most of the more serious money laundering and smuggling charges against him were dropped.
- The failure of the Mimika *kabupaten* government to hold a second round of elections, where the leading candidate is a non-Papuan.
- The active consideration by the Ministry of Home Affairs of at least 30 new *kabupaten* across Papua and Papua Barat and three new provinces (Papua Tengah, Papua Selatan and Papua Barat Daya).<sup>2</sup>

With everything else going on, the *otsus plus* debate seems like a sideshow, but the implications if some version of it does get adopted could be huge.

## II. DEVELOPMENTS SINCE NOVEMBER 2013

The idea of *otsus plus* had emerged in an April 2013 meeting between Enembe and President Yudhoyono and by November, two very different drafts had been produced, one in Jayapura by Enembe's team, one in Manokwari by Governor Bram Atururi's.<sup>3</sup> The first was focused on increasing the powers and revenue of the provincial government, the second on protections for indigenous Papuans. While both versions could be seen as purely Papuan proposals that threw down a challenge to Jakarta to make good on its promises, it was the distrust between the political elites of the two provinces that took centre stage from November onwards.

The Enembe team never saw consultation with Papua Barat as anything more than a courtesy.

2 In December 2013, the national parliament formally proposed draft legislation to the government that would create 30 new *kabupaten* and three new provinces across Papua (along with 32 new administrative units elsewhere in Indonesia). Following a 27 December presidential instruction, the Ministry of Home Affairs set up two teams (one for Papua, the other for everywhere else) to examine whether the proposed new units meet the criteria set out in a government regulation, Peraturan Pemerintah 78/2007. If they do, they will be returned to parliament for final approval. Under Law 21/2001, the MRP and the provincial assembly must also approve the creation of new provinces. The Manokwari parliament leadership has indicated it will support the creation of Papua Barat Daya, but in Jayapura, leaders of the provincial parliament say the new provinces do not make sense. "Pemekaran Itu Bikin Masalah Baru", *Suluh Papua*, 25 February 2014. For more on the division of Papua into smaller administrative units—and how it is triggering more conflict—see *Carving up Papua: More Districts, More Problems*, IPAC Report No. 3, 9 October 2013.

3 For an analysis of the origins of *otsus plus* and the differences in the drafts produced by Papua and Papua Barat, see *Otsus Plus: The Debate over Enhanced Special Autonomy for Papua*, IPAC Report No.4, 25 November 2013.

One member of the Papua legislature argued that because there was no mention of Papua Barat in the original 2001 special autonomy law (since it was only created in 2003), there was no legal basis for involving the Manokwari administration in its revision.<sup>4</sup> But the lack of consultation may also have stemmed from the distrust many in the Papua elite have of their Papua Barat counterparts, some of whom they see as having been complicit in the 2003 division that even the Constitutional Court acknowledged as illegal.<sup>5</sup>

When Atururi's team came back proposing extensive revisions to the Jayapura draft in November 2013, the reaction in the Enembe team was surprise and suspicion. They nevertheless agreed to incorporate some provisions, and the process dragged on into the new year.

In mid-January, a consolidated draft (by this time, Draft No.12, counting back to the first version produced for Enembe) emerged that incorporated suggestions from the MRP. The next step was to obtain the consent of the Papua provincial legislature, the Dewan Perwakilan Rakyat Papua (DPRP)—Article 77 of Law 21/2001 stipulates that revisions to the law may be proposed “by the people of Papua through the DPRP and the MRP”. Although it was not circulated widely beyond the DPRP members, news began to spread in the Papuan press about the controversial Article 299, one of the MRP's initiatives. It read:

Should this law fail to be implemented consistently and meaningfully by the Government, or fail to provide significant benefits in efforts to increase living standards and the welfare of indigenous Papuans, the MRP may take the initiative of organizing a Referendum that would involve all indigenous Papuans in Tanah Papua in an act of self-determination.<sup>6</sup>

One source explained that Article 299 was added because central government officials needed to understand the costs of failing to fully implementing the new law. But it also was perhaps the logical outgrowth of the emphasis throughout all the drafts on the obligations of the central government toward Papua, combined with an obvious lack of any enforcement capability. In the original special autonomy law, there is almost no reference to the central government or its officials being “obliged” (*wajib*) to do certain things for Papua. But in the latest draft, the government is *obliged* to open international access to and from Papua; it is *obliged* to give preferential treatment to and open career opportunities for indigenous Papuans in the military, police, prosecution service and judiciary. Immigration is *obliged* to explain when it refuses to grant a visa to someone recommended by the provincial government; soldiers are *obliged* to give the highest respect to human rights and local customs. Throughout, however, it is clear that Papuans have no recourse if these obligations are not met. Hence, one reason that Article 299 may have been inserted.

But both Enembe and the head of the MRP, Timotius Murib, suggested that the article was only a “bargaining” chip in discussions with Jakarta.<sup>7</sup> Murib suggested it was also the result of popular pressure:

4 IPAC interview, Albert Bolang, 4 February 2014. This argument ignores the 2008 legislation that extended special autonomy to Papua Barat and specifically states that the wording “Papua province” in the 2001 law should be understood to mean “Papua province and Papua Barat province.” See Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2008, Article 1a and Undang-Undang No. 35 Tahun 2008.

5 For more on the process behind the creation of Papua Barat, see International Crisis Group, “Dividing Papua: How Not to Do It”, 9 April 2003. In a confusing November 2004 ruling, the Constitutional Court upheld the legitimacy of the 2003 creation of Papua Barat (then called Irian Jaya Barat) but also declared that Law 45/1999, which provided the legal basis for its creation, should have been superseded by Law 21/2001 which mandated that the creation of new provinces in Papua have the assent of the MRP and the DPRP.

6 Article 299, IPAC translation, Tim Asistensi RUU Pemerintahan Otonomi Khusus di Tanah Papua, “Draf Keduabelas (Hasil Sinkronisasi Draft Usulan Pemprov Papua dan Papua Barat), Rancangan Undang-Undang Republik Indonesia No.:... Tentang Pemerintahan Otonomi Khusus di Tanah Papua”, 14 January 2014. The term Tanah Papua is used in the law to refer to both Papua and Papua Barat and any future provinces carved out of the original territory.

7 “Draf RUU Pemerintahan Otsus Diserahkan ke DPRP”, *Cenderawasih Pos*, 16 January 2014; “Ancaman Referendum Agar Pemerintah Konsisten”, *Cenderawasih Pos*, 23 January 2014.

That article is in there because the people said it had to be in there. Why? To stop what happened to the implementation of Law 21/2001 from happening to this one....<sup>8</sup>

The problem was that since there was almost no public consultation beyond a July 2013 meeting convened by the MRP, it was rather disingenuous to talk about what the people were demanding.

In the days preceding consideration of the draft, some DPRP members raised concerns about its provisions, including Article 299, and called for clarification and further debate. Nevertheless, the law was approved in plenary on 20 January. The speaker and deputy speaker of the Papua Barat assembly, Yosef Auri and Jimmy Ijie, also signed the draft in a symbolic capacity; they were both in town as suspects in a Rp.22 billion corruption trial in which they were later found guilty.<sup>9</sup> It is unclear how well members understood what they had approved: one senior Partai Demokrat member of the DPRP came out two weeks later and said he knew nothing about it. Ijie had signed the law but spoke out critically against a number of provisions, including Article 299, in the days that followed.<sup>10</sup>

Understanding and support for the draft among Papuan civil society remained low. The influential Papuan Customary Council (Dewan Adat Papua, DAP) strongly criticized the proposal, saying the governor had done little to engage the public on the matter and that revisions to *otsus* were a waste of time when it was clear Jakarta was not interested.<sup>11</sup>

Following the DPRP's approval, a number of small changes were made to bring the law into line with existing legislation before it was returned to the governor on 23 January.<sup>12</sup> That included the suggested removal of Article 299 on both political and legal concerns—it would be unacceptable in Jakarta and it was also non-executable.<sup>13</sup>

Enembe then flew to Jakarta, along with a delegation from the DPRP, the MRP and a few members of the MRPB, its equivalent in Papua Barat, who supported the Jayapura draft. On 28 January, President Yudhoyono convened a meeting at the presidential palace in Bogor with Enembe's delegation and a handful of cabinet ministers including Coordinating Minister for Security, Political and Legal Affairs Djoko Suyanto; Minister of Home Affairs Gamawan Fauzi; and the heads of the police, military, and State Intelligence Agency (Badan Intelijen Negara, BIN). Enembe formally handed over the draft—now Draft No.13—and in a press conference afterwards, Suyanto indicated that it would be reviewed by the relevant ministries in Jakarta over two to four months.

Atururi also attended the meeting, but he had not signed off on the draft. Separately, a delegation from the MRPB visited the Coordinating Ministry for Security, Political and Legal Affairs a day before the Bogor meeting to register its objections to the proposal; its principal concerns were the restrictive definition of indigenous Papuans, the failure to incorporate land and resource protections for *adat* communities from the Papua Barat draft, the introduction of a Governor-General, the removal of direct elections and the reunification of the MRPs. On 6 February, the Minister of Home Affairs publicly called on Atururi to sign the draft, saying the

8 "Ancaman Referendum Agar Pemerintah Konsisten", *Cenderawasih Pos*, 23 January 2014.

9 On 10 February, a corruption court (Tipikor) in Jayapura sentenced all 44 members of the DPRPB to prison terms of between 12 and 15 months and fines of up to Rp.50 million (roughly \$4,300). "44 Anggota DPR Papua Barat Divonis 12-15 Bulan", *Cenderawasih Pos*, 11 February 2014. They are expected to appeal the verdict.

10 "Ruben Magai: Saya Tidak Tahu Otsus Plus", *Suluh Papua*, 8 February 2014; "RUU Pemerintahan Otsus Tak Boleh Mengancam NKRI", *Cenderawasih Pos*, 21 January 2014.

11 "RUU Pemerintahan Otsus Tak Boleh Mengancam NKRI", *Cenderawasih Pos*, 21 January 2014.

12 The process also included detailing the form and number of subsidiary and supplementary legislation that would be required to implement the new law: some 21 government regulations (*peraturan pemerintah*), 90 provincial regulations (*peraturan daerah provinsi*, [*perdas*]) and *peraturan daerah khusus*, [*perdasus*]), as well as an unspecified number of presidential decisions (*keputusan presiden*) and gubernatorial decisions (*keputusan gubernur*). "DPRP Serahkan Draf RUU Pemerintahan Otsus", *Cenderawasih Pos*, 24 January 2014.

13 IPAC telephone interview, Albert Bolang, deputy head of DPRP Badan Legislasi, 4 February 2014. The draft ultimately handed over to the president replaced Article 299 with language similar to that contained in Article 77 of the 2001 law.



lack of agreement was holding up review.<sup>14</sup> This was also clearly the view of Enembe's delegation.

A breakthrough came on 12 February, when a small team from both provinces, assembled in Jakarta by the Ministry of Home Affairs, agreed to make another effort at consolidation. Three days later, they signed off on Draft No.14, which some are already calling the "final draft" but which is now undergoing central government review. Papua Barat still has concerns over several of its provisions.

### III. STRENGTHENED PAPUAN POLITICAL IDENTITY

Governor Enembe says that *otsus plus* will restore the "Papuanness" and thus the legitimacy of special autonomy by placing greater stress on Papuan political identity.<sup>15</sup> That identity would be reinforced by a strengthened MRP and a governor-general who would symbolically unite all the provinces of Papua (there are two now, but three more may be on the way). There is little support for these changes in Manokwari, where they are seen as strengthening the Jayapura elite at Papua Barat's expense, and all are likely to be viewed as problematic in Jakarta, where the Ministry of Home Affairs in particular has opposed a political role for any institution other than the provincial legislatures.

#### A. Narrowing the definition of indigenous Papuans

The original special autonomy law, Law 21/2001, included a definition of indigenous Papuans (*orang asli Papua*) that was at once both narrow and broad. It restricted indigenous status to those of Melanesian race from one of the indigenous clans of Papua, but also opened the designation to those "accepted as indigenous Papuans by a Papuan *adat* community".<sup>16</sup> That additional clause allows non-Melanesian migrants from elsewhere (such as Javanese, Bugis, Moluccans, Kei islanders and ethnic Chinese) who have lived in Papua and been accepted by local communities, to qualify as indigenous Papuans. The current head of Teluk Bintuni *kabupaten*, an Ambonese, and Abdul Moeis, a Bugis who is now in contention to head Mimika *kabupaten*, both fall in this category.

As noted, the latest draft drops this exception and narrows the definition further to exclude anyone not born to an indigenous Papuan father. The latter restriction is of particular concern to Papua Barat because it would deny indigenous status to those who claim Papuan identity through their mother. Intermarriage of Papuan women in the Fakfak and Kaimana areas with mostly Muslim traders from the Malukus and elsewhere is common. The Manokwari team prefers a version that defines three categories:

- indigenous Papuans (*orang asli*, those of Melanesian race from either parent and from one of the indigenous clans of Papua);
- Papuans (*orang Papua*, those accepted as Papuans in *adat* communities in accordance with local custom); and
- residents of Papua (*penduduk Papua*, all those who are legally registered as residents of Papua).

14 "Mendagri Minta Gubernur Papua Barat Tanda Tangan Draf Otsus Plus", Kompas.com, 7 February 2014.

15 Enembe first telegraphed the importance of "Papuanness" in a speech two days after he was inaugurated on his vision for Papua's development and the need to redesign *otsus*. He explained the first pillar of his "Papua Rises" agenda as being that "we Papuans must stand upright with pride and dignity within the framework of the Unitary Republic of Indonesia without losing our own identity and the special qualities of our Papuanness". See [bintangpapua.com/index.php/lain-lain/papua/item/3522-gubernur-papua](http://bintangpapua.com/index.php/lain-lain/papua/item/3522-gubernur-papua).

16 Article 1(t), Law 21/2001.

The latest draft establishes a number of privileges and rights that are limited to indigenous Papuans. The most far-reaching is a requirement that all candidates for local political office be indigenous Papuans—going far beyond the current law, which only requires the governor and vice-governor to be indigenous. But the definition is also important to a range of proposals for affirmative action and for controlling population movement: building on language in the Manokwari draft of November, the latest draft would provide non-indigenous Papuans with only “seasonal” or “temporary” identity cards and strengthen monitoring and control of migration at all levels of government.

Some of these protections risk being viewed as unconstitutional, if found to violate provisions guaranteeing equal protection for all citizens. The Constitution does include special recognition and protections for customary communities (*masyarakat hukum adat*), but this is different from extending special privileges to a group defined by race.<sup>17</sup>

### B. Reuniting the MRP

The MRP was viewed by the Papuan drafters of the original special autonomy law as both the keystone and guardian of special autonomy and by Jakarta as a potentially dangerous incubator of separatism. Its powers were substantially diluted from what Papuans wanted, and Jakarta delayed its establishment for four years. It has always struggled to live up to the role its creators envisaged, even more so after it split in two in 2011, with the establishment of a separate council for Papua Barat in Manokwari. The latest draft would re-establish a single MRP for all of Papua, seated in Jayapura, with a slightly expanded membership set at three-quarters of the combined total of the provincial DPRs. The reunited MRP would also have expanded powers, including the ability to propose provincial regulations (*perdasus*) to the provincial legislature, to “register objections” to provincial regulations that do not uphold the rights of indigenous Papuans, and to approve top executive, legislative and civil service positions at all provincial and sub-provincial levels.<sup>18</sup> It would effectively have a veto power over all government appointments.

The Ministry of Home Affairs has maintained from the outset that the MRP only has authority over cultural issues, and there is no reason to believe its views have changed.

The leadership of the Papua Barat MRP remains concerned about a reunited body in part because it could mean reduced influence: just two of the seven traditional *wilayah adat* that function as constituencies for MRP membership are in Papua Barat, yet today Papua Barat’s MRP is the same size as Papua’s. They are also wary of the provocative political stance the Jayapura MRP leadership has often taken, most recently in the debate over Article 299.<sup>19</sup>

### C. A Governor-General

The Bogor draft would establish the largely symbolic post of Governor-General (Gubernur-Jen-

17 The most prominent challenge to the existing provisions that limit the posts of governor and deputy governor to indigenous Papuans came from Komarudin Watubun, the provincial head of the PDIP party, who was barred by the MRP in 2006 from becoming Barnabas Suebu’s running mate because he was born in the Kei islands, a part of Southeast Maluku. In a 2010 complaint to the Constitutional Court, Komarudin framed the issue not as a denial of any right to equal opportunity but rather a denial of the rights of an *adat* community in Serui that claimed to have accepted him as one of their own. By making a unilateral decision, he argued, the MRP had violated the rights of *adat* community. The Court accepted his complaint and ordered the MRP to defer to the judgments of *adat* communities themselves. Members of the MRPB have raised similar objections to the Bogor draft’s definition of orang asli Papua, arguing that ultimately the decision should rest with the *adat* communities. IPAC interview, Wolas Krenak and Robi Aituarauw, MRPB members, Jakarta, 13 February 2014.

18 Two types of provincial regulations exist under in Papua and Papua Barat under: provincial regulations (*peraturan daerah provinsi, perdasi*) and special provincial regulations (*peraturan daerah khusus, perdasus*). The former are provincial regulations issued under the authorities granted to all provinces while the latter are those issued under the framework of *otsus*.

19 IPAC interview, Wolas Krenak and Robi Aituarauw, MRPB members, Jakarta, 13 February 2014.



dral) to oversee the work of provincial governments, set a vision for long-term development and mediate disputes, both between provinces and between communities. It would be based in Jayapura, with no operational budget of its own. Real power would continue to reside with the provincial governors.

The symbolic nature of the role is important but there are few Papuan elder statesmen, let alone stateswomen, available for the seven-year job who would be acceptable to all of the parties that have to sign off on the appointment: the provincial governments and legislatures responsible for nominating candidates and the MRP that approves them. Freddy Numberi, former minister of Maritime Affairs and Fisheries and retired vice-admiral in the Indonesian Navy, is one person whose name may come up, but as of late February, no one had even talked to him about it.

Papua Barat officials believe the role would only create a new and unnecessary layer of bureaucracy. Moreover, they say, the post of Governor-General evokes—in name if not in substance—the Jakarta-based colonial ruler of the Dutch East Indies. Some Papuan leaders suggest that in fact the model was drawn from Aceh's special autonomy law, and the governor-general is Papua's equivalent of the *wali nanggroe*, literally “guardian of the state”, a supra-governmental position. But the *wali nanggroe* was designed as a role with real authority—too much, in the eyes of the Home Affairs Ministry. The governor-general is designed as a role with almost none.

#### IV. LESS DEMOCRACY

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The most immediate and sweeping change written into the Bogor draft is an end to direct elections for all executive posts in Papua. The governor would be elected by members of the provincial assembly, the *bupati* and *walikota* by the local assemblies. These provisions were not included in the drafts circulating in 2013; the Manokwari team has made it clear that they will be trying to remove them.<sup>20</sup>

They do however fit with proposals to end direct local elections across Indonesia that were introduced by the Ministry of Home Affairs in 2013 in a proposed Law on Local Elections (RUU Pemilihan Kepala Daerah). The issue has attracted considerable debate, both between the parliament and the government and among political parties; a change back to indirect elections now looks unlikely at national level. But Home Affairs Minister Gamawan Fauzi and Enembe have consistently defended the idea of creating an exception for Papua.<sup>21</sup> Enembe has usually cited both the cost of election campaigns in Papua, and their propensity to cause conflict as reasons for why direct elections do not make sense. Papuan culture is rooted in Melanesian-style communal leadership and decision-making, he argues (what the Bogor draft calls “big-man leadership”), and thus Papuans are not ready for the open democratic electoral competition.<sup>22</sup>

#### V. GREATER PROVINCIAL AUTHORITY

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The lack of real power for the provincial government under Law 21/2001 has always been among the greatest sources of Papuan dissatisfaction with it. In theory, the province had authority over all matters except for defence, foreign affairs, justice, finance and religious affairs. In fact, Jakarta officials have frequently interpreted national laws as trumping special autonomy in other fields as well, and a raft of legislative changes at national level introduced since 2001 have failed to take into account Papua's special status.

20 IPAC telephone interview, Agus Sumule, 17 February 2014.

21 “Pilkada Langsung Dipertahankan”, *Suara Pembaruan*, 28 January 2014.

22 See, for example, “Gubernur: Pilkada Langsung di Papua Rawan Konflik”, *Kompas.com*, 28 January 2014.

The Bogor draft sets out far stronger powers for the provinces, taking back authority from both the central government and *kabupaten*. It reserves for the provincial government authority over a wide range of areas, including education, health, farming, forestry, land management, workforce management, planning, provincial finance, resource management and human rights protection. The 42 *kabupaten* and municipalities (*kota*) would be given authority to oversee policy on a much smaller range of issues (nine compared to 30 for the provincial governments, including health and education); the exact division of authority between the two levels of government is left open, to be determined based on the needs and capacity of each local government.

In those areas that remain the domain of the central government, the provincial government would gain some limited powers, including:

- The right to represent the central government in certain bilateral relations (all references to specific countries and regions have now been dropped) and to develop cross-border cooperation with neighbours;
- The right to consult and provide advice on defence policy matters;
- The right to approve or veto appointments for the provincial head of police, attorney-general, and the courts, and an affirmative action policy for indigenous Papuans eligible for such posts and others; and
- Support for special *adat* courts that would not be part of the judicial system and could rule on disputes over *adat* matters.

The key provision is contained in the closing article (Article 352), which would mandate that the government and parliament respect Papua's exceptionalism (*kekhususan*) in all law and policy-making, and that future legislation must include the clause "except in Papua, where [this issue] shall be regulated separately under the terms of the Law on Special Autonomy Governance in Tanah Papua".<sup>23</sup> This would effectively mean that most new laws passed in Jakarta would not apply to Papua—it is difficult to imagine the national parliament ever signing off on such language.

## VI. PROVINCIAL CONTROL OVER RESOURCE MANAGEMENT

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Both Enembe's and Atururi's teams have sought to strengthen local control over resource and land management, but they have very different visions of what needs to be done. Enembe and his Papua team are focused almost exclusively on getting more powers into the hands of the governors. The Papua Barat team wants greater protection for the rights of local *adat* communities. Thus, Enembe's team devoted pages and pages to the governors' authority over mining and forestry concessions but showed little concern with the alienation or expropriation of customary land. Atururi's team rejects the opening article of the land section (Section 20 in the Bogor draft), which states that "every citizen and legal body resident in Papua has the right to land". It wants Papuan land guaranteed to remain in Papuan hands and is seeking clear assurances that *adat* land cannot be sold. The two sides remain deeply divided over this critical issue, and it is unclear how the final language will read.

### A. *Adat land*

Enembe's team seems to give authority to the governors to determine the "control, ownership and use" of *adat* land while respecting *adat* rights, but it offers little direct control to *adat* communities. Atururi's team wants a provision reinserted from its November draft that "any land

<sup>23</sup> IPAC translation. See Article 352.

used by a third party returns to the ownership of the *adat* community after the usage period expires.”<sup>24</sup> It also was insisting on:

- Mandating participative mapping at local and provincial levels to determine the scope and boundaries of *adat* land;
- Blocking the sale of customary land by *adat* communities and requiring rent and long-term use agreements to be determined by consensus;
- Paying back the proceeds of property and construction taxes on tanah ulayat (communally owned land) whose alienation is alleged to have been unjust to the affected *adat* community.
- Requiring comprehensive compensation for *adat* communities where mining operations take place, extending beyond cash compensation to a share in company operations and decision-making structures, replacement housing and infrastructure upgrades; and
- Setting aside five hectares of smallholder (*plasma*) for each indigenous family on land that is turned over for plantation development.

Enembe’s team inserted language that suggests a greater possibility of sales and concessions to non-Papuan. In one article that Papua Barat wants removed, for example, it says that “*Adat* communities must respect ownership rights over *adat* land that have been legally turned over individuals or legal bodies.”<sup>25</sup> It also allows the provincial government to give domestic and foreign investors use of *adat* land as long as they respect local customs and traditions without provisions that mandate consultation with the affected communities.

### B. Mining and forestry

Many in advocacy and academic circles have become dismayed at the indiscriminate granting of permits for natural resource exploitation across Indonesia, especially at the *kabupaten* level. Enembe’s team has sought to centralize a far greater degree of authority in the governor’s office. In forestry, the proposal would give the provincial government the authority to identify forest areas that belong to *adat* communities and would far greater powers to issue forestry licenses. In mining, the authority to grant Contract of Work agreements would shift from the central to the provincial government, and the extension of any existing agreement would be subject to the provincial government’s approval. Mining licenses would be granted by the governor and not the *bupati*; mining operators would be required to divest shares to the provincial government after five years. A new provision would also require all mining companies across Papua to build a smelter in the area of operation.<sup>26</sup>

The Manokwari draft would give fewer powers to the governors, and maintain greater control at the *kabupaten* level, in keeping with current national policy.

All of these measures look geared towards strengthening the political power and income-generating capacity of the governor. But they could also lead to better coordination in forestry and mining policy in the province and provide a greater level of supervision than many of the weak *kabupaten* administrations are able to provide.

<sup>24</sup> Bogor draft, Papua Barat suggested insert after Article 255.

<sup>25</sup> Bogor draft, Article 255.

<sup>26</sup> This takes a controversial provision of the 2009 mining law, banning exports of unprocessed or semi-processed ores one step further. The 2009 laws requires mining companies to build smelters in Indonesia; this would require any mining companies operating in Papua, regardless of the mineral involved, to build smelters in Papua.

## VII. MORE REVENUE FROM THE CENTRE

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The Bogor draft demands even higher allocations from central government for Papua than earlier proposals. The largest chunk is comprised by a five-fold increase in the size of the general funds allocation (*dana alokasi umum*, DAU), which already accounts for the largest portion of provincial income in both provinces. Papua province already receives the highest DAU allocation of any province; it receives 10 per cent more than the second-highest recipient, Central Java, which has twelve times the population.<sup>27</sup> It maintains the broad sweep of increases in the share of resource revenues and taxes proposed in earlier drafts.<sup>28</sup> The Manokwari drafters see these increases as largely wishful thinking but left them untouched in their November revisions. Because the increase in the size of Papua's share of the DAU would come at the expense of the share enjoyed by all other provinces, this measure would likely be rejected by the DPR.

## VIII. HUMAN RIGHTS

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One frequent complaint from Papuans about special autonomy is that after more than a decade, there is still little accountability for human rights violations. The 2001 law called for the establishment of a human rights court but did not specify where it had to be, and the central government's position has always been that as long as an ad hoc human rights court in Makassar, set up under a 2000 law, had jurisdiction over Papua, there was no need for another one. Enembe's team originally gave short shrift to human rights, but the Papuan Barat drafters insisted on including language from their November draft in the consolidated version, calling for human rights courts to be established in the provincial capitals that would have the authority to impose prison terms for perpetrators and provide compensation, restitution or rehabilitation to victims, in a way that respected local customary law.<sup>29</sup> It leaves open the question of whether the courts would be able to address past violations; in Aceh, the provision in the 2005 peace agreement on a human rights court explicitly rules out the possibility of its rulings being applied retroactively—and almost ten years after the agreement, there is still no court.

All drafts have included provisions for a commission on truth and reconciliation. The language differs from the 2001 law in that it removes the requirement that the commission be subordinate to a national commission, especially because no national commission yet exists.<sup>30</sup> The role of the truth and reconciliation commission will be to “undertake clarification on the history of Papua in order to strengthen national unity” and to clarify steps towards reconciliation. The Bogor draft states that the commission will be set up by presidential decree, based on suggestions from the governor about its composition and functions, and that the president must issue a decree within three months of receiving the governor's suggestions.

27 According to 2010 Census figures, Papua had a population of 2.7 million and Central Java 32.4 million. In 2014, the DAU for Papua province amounts to 1.99 trillion rupiah (or roughly U.S. \$169 million). This does not include separate allocations for the *kabupaten*. The total DAU allocation for Papua, Papua Barat and all the kabupaten/kota is Rp. 26.4 trillion (or roughly U.S. \$2.2 billion). The DAU figures for 2014 are listed in annex to Peraturan Presiden 2/2014, 27 January 2014. See also Sekretariat Kabinet Republik Indonesia, “Dana Alokasi Umum Ditetapkan, Papua dan Kab. Bogor Dapat Paling Banyak”, 2 February 2014.

28 See IPAC report, *Otsus Plus: The Debate over Enhanced Special Autonomy for Papua*, op. cit., Section III.H.

29 Bogor draft, Article 293.

30 In 2006, the Constitutional Court declared a law establishing a national truth and reconciliation commission as unconstitutional, in part because of its many weaknesses and inconsistencies. While the effect in Jakarta was to send the law back to the drawing board, it also meant that truth and reconciliation commissions that were supposed to be set up in Papua and Aceh, reporting to the national commission, were also stopped in their tracks. In December 2013, the provincial legislature in Aceh passed a regulation setting up a provincial commission anyway. As of February 2014, there had been no official reaction to the draft from the central government.

## IX. CONCLUSION

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For all the attention the political elites in Jayapura and Manokwari have focused on reconstructing special autonomy, there has been no effort to get public support or buy-in from key constituencies in Papua. The tightness of the timing and the need to get the draft on the parliamentary schedule before President Yudhoyono leaves office are not adequate explanations for the lack of consultation. The issues raised in these drafts are critical, and the Papuan public needs to be involved.

The changes envisioned in this bill, from the ending of direct elections to the debate over land use, could have long-term ramifications for the land of Papua, regardless of how many provinces it eventually includes. The issues of political, economic and cultural autonomy addressed in the drafts in many ways track the concerns raised by the Papua Peace Network (Jaringan Damai Papua, JDP), a civil society group, in its public consultations across Papua in 2011 and 2012 – and it was clear then that many Papuans had deeply felt opinions on the issues. The *otsus plus* drafting process has been constructive to the extent that it has set out concrete proposals for ideas that were discussed in the abstract during those JDP consultations, although those now seem like ancient history. But there is going to have to be a return to some form of public debate if Papuan officials want to be seen as genuinely representing Papuan views.

Whether or not the ideas in these drafts get taken up by Jakarta is another matter. But given the fact that none of the aspirants to succeed President Yudhoyono have spoken in anything other than the blandest terms about how to solve Papua's many problems, it would be worth their while to study the drafts of *otsus plus* as an expression, at the very least, of what elected Papuan officials see as a starting point to setting Papuan-Jakartan relations on the right track. The candidates can take it from there.

